

AMENDED IN ASSEMBLY AUGUST 6, 2014

AMENDED IN ASSEMBLY JULY 2, 2014

AMENDED IN ASSEMBLY JUNE 18, 2014

AMENDED IN SENATE MAY 5, 2014

AMENDED IN SENATE MARCH 28, 2014

## SENATE BILL

**No. 1414**

### **Introduced by Senator Wolk**

(Coauthors: Assembly Members Mullin and Williams)

February 21, 2014

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An act to amend ~~Sections~~ *Section* 380 and 454.5 of, and to add Section 380.5 to, the Public Utilities Code, relating to electricity.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1414, as amended, Wolk. Electricity: ~~resources adequacy requirements~~. *demand response*.

(1) The Public Utilities Act requires the Public Utilities Commission, in consultation with the Independent System Operator, to establish resource adequacy requirements for all load-serving entities, as defined, in accordance with specified objectives. The definition of a “load-serving entity” excludes a local publicly owned electric utility. The act requires each load-serving entity to maintain physical generating capacity adequate to meet its load requirements to provide reliable electric service. The act requires the commission to determine the most efficient and equitable means for achieving prescribed objectives.

This bill would ~~include facilitating~~ *include, as an objective for the resource adequacy requirements referenced above, establishing or maintaining demand response products and tariffs that facilitate the*

economic dispatch and use of demand response as an objective for the resource adequacy requirements referenced above: *that can either meet or reduce an electrical corporation's resource adequacy requirements, as determined by the commission.* The bill would additionally require each load-serving entity to maintain both electrical demand response and physical generating capacity adequate to meet its load requirements. The bill would require the commission to determine the most efficient and equitable means to ensure that investments are made in new and existing demand response resources that are cost effective and help to achieve grid reliability and the state's greenhouse gas emissions reduction goals. The bill would require the commission to establish a mechanism to value the development and deployment of load modifying demand response resources that can *load modifying demand response resources, including, but not limited to, the ability of demand response resources to help meet distribution needs, transmission system needs, and to help reduce a load-serving entity's resource adequacy obligation and obligation.* The bill would require the commission to ensure that changes in demand caused by load modifying demand response are expeditiously and comprehensively reflected in relevant forecasting and planning proceedings and associated analyses and encourage reflection of these changes in demand in the operation of the grid. The bill would require the commission, in establishing a demand response program, to take certain actions. ~~The bill would authorize the commission to establish metering, monitoring, and consumer protection policies for demand response programs involving third party demand response providers.~~

(2) ~~The act requires each electrical corporation to file with the commission a proposed procurement plan with specified information, including, among other things, a procurement process under which the electric corporation may request bids for procurement-related services, a showing that the procurement plan will achieve, among other objectives, the creation or maintenance of a diversified procurement portfolio, and the electric corporation's risk management policy, strategy, and practices.~~

This bill would require the proposed procurement plan to include a competitive procurement process that would also allow the electric corporation to request bids for demand side response services. The bill would require that the plan's diversified procurement portfolio include demand response products and tariffs that can either meet or reduce an

electrical corporation's resource adequacy requirements, as determined by the commission.

(3)

(2) Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

This bill would be part of the act and an order or other action of the commission would be required to implement the bill. Because a violation of this bill or an order or other action of the commission implementing those provisions would be a crime, and because the bill would make certain violations by a load-serving entity a crime, this bill would thereby impose a state-mandated local program by creating new crimes and by expanding the definition of existing crimes.

(4)

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. (a) The Legislature finds and declares all of the  
2     following:  
3     (1) Demand response programs and tariffs empower customers  
4     to save money and reduce pollution by making electrical demand  
5     smart, dynamic, and responsive.  
6     (2) Demand response allows for a smarter electrical grid that  
7     reduces demand for electricity during peak hours when the grid  
8     operator would otherwise often be forced to rely on quite inefficient  
9     fossil fuel peaking plants.  
10    (3) Demand response can play a pivotal role in integrating clean  
11    energy resources onto the electrical grid by shifting electricity  
12    usage to times when there is abundant electricity generated by  
13    renewable energy resources available and can help provide  
14    electrical capacity in southern California following the closure of  
15    the San Onofre Nuclear Generation Station and the phase out of  
16    natural gas fired powerplants that employ once-through cooling.

(4) Reducing and shifting demand for electricity through demand response can negate the need for more costly investments in powerplants and transmission lines.

(5) Increasing the role of demand response will reduce emissions of greenhouse gases and other pollutants from the electricity sector.

(6) Other regions of the United States have achieved substantial reductions in peak demand through deployment of demand response.

~~(7) California lags far behind the goal established in the 2005 Energy Action Plan of reducing 5 percent of peak demand using demand response.~~

(b) In enacting this act, it is the intent of the Legislature to ensure that California and the Public Utilities Commission *help* meet the state's greenhouse gas emissions reduction ~~and energy~~ goals *and achieve grid reliability* by increasing the utilization of demand response.

(c) It is further the intent of the Legislature, in enacting this act, to ensure that the procurement, programmatic, rate-based, and other options that the Public Utilities Commission is pursuing or may pursue in furtherance of demand response are in no way hindered or superseded by the provisions in this act.

SEC. 2. Section 380 of the Public Utilities Code is amended to read:

380. (a) The commission, in consultation with the Independent System Operator, shall establish resource adequacy requirements for all load-serving entities.

(b) In establishing resource adequacy requirements, the commission shall achieve all of the following objectives:

~~(1) Facilitate development of new generating capacity, the retention of existing generating capacity, and demand response that are economic, needed, and maintain and help achieve the state's energy and greenhouse gas emissions reduction goals.~~

*(1) Facilitate development of new generating capacity and retention of existing generating capacity that is economic and needed.*

*(2) Establish or maintain demand response products and tariffs that facilitate the economic dispatch and use of demand response that can either meet or reduce an electrical corporation's adequacy requirements, as determined by the commission.*

~~(2)~~

1 (3) Equitably allocate the cost of generating capacity and  
2 demand response in a manner that prevents the shifting of costs  
3 between customer classes.

4 ~~(3)~~

5 (4) Minimize enforcement requirements and costs.

6 ~~(4)~~

7 (5) Maximize the ability of community choice aggregators to  
8 determine the generation resources used to serve their customers.

9 ~~(5) Facilitate the economic dispatch and use of demand response,~~  
10 ~~as determined by commission.~~

11 (c) Each load-serving entity shall maintain physical generating  
12 capacity and electrical demand response adequate to meet its load  
13 requirements, including, but not limited to, peak demand and  
14 planning and operating reserves. The generating capacity or  
15 electrical demand response shall be deliverable to locations and  
16 at times as may be necessary to maintain electric service system  
17 reliability and local area reliability.

18 (d) Each load-serving entity shall, at a minimum, meet the most  
19 recent minimum planning reserve and reliability criteria approved  
20 by the Board of Directors of the Western Systems Coordinating  
21 Council or the Western Electricity Coordinating Council.

22 (e) The commission shall implement and enforce the resource  
23 adequacy requirements established in accordance with this section  
24 in a nondiscriminatory manner. Each load-serving entity shall be  
25 subject to the same requirements for resource adequacy and the  
26 renewables portfolio standard program that are applicable to  
27 electrical corporations pursuant to this section, or otherwise  
28 required by law, or by order or decision of the commission. The  
29 commission shall exercise its enforcement powers to ensure  
30 compliance by all load-serving entities.

31 (f) The commission shall require sufficient information,  
32 including, but not limited to, anticipated load, actual load, and  
33 measures undertaken by a load-serving entity to ensure resource  
34 adequacy, to be reported to enable the commission to determine  
35 compliance with the resource adequacy requirements established  
36 by the commission.

37 (g) An electrical corporation's costs of meeting resource  
38 adequacy requirements, including, but not limited to, the costs  
39 associated with system reliability and local area reliability, that  
40 are determined to be reasonable by the commission, or are

1 otherwise recoverable under a procurement plan approved by the  
2 commission pursuant to Section 454.5, shall be fully recoverable  
3 from those customers on whose behalf the costs are incurred, as  
4 determined by the commission, at the time the commitment to  
5 incur the cost is made, on a fully nonbypassable basis, as  
6 determined by the commission. The commission shall exclude any  
7 amounts authorized to be recovered pursuant to Section 366.2  
8 when authorizing the amount of costs to be recovered from  
9 customers of a community choice aggregator or from customers  
10 that purchase electricity through a direct transaction pursuant to  
11 this subdivision.

12 (h) The commission shall determine and authorize the most  
13 efficient and equitable means for achieving all of the following:

14 (1) Meeting the objectives of this section.

15 (2) Ensuring that investment is made in new generating capacity.

16 (3) Ensuring that existing generating capacity that is economic  
17 is retained.

18 (4) Ensuring that the cost of generating capacity and demand  
19 response is allocated equitably.

20 (5) Ensuring that community choice aggregators can determine  
21 the generation resources used to serve their customers.

22 (6) Ensuring that investments are made in new and existing  
23 demand response resources that are cost effective and help to  
24 achieve grid reliability and the state's greenhouse gas emissions  
25 reduction goals.

26 (i) In making the determination pursuant to subdivision (h), the  
27 commission may consider a centralized resource adequacy  
28 mechanism among other options.

29 (j) The commission, in an existing or new proceeding, shall  
30 establish a mechanism to value ~~the development and deployment~~  
31 ~~of load-modifying demand response resources that can reduce a~~  
32 *load modifying demand response resources, including, but not*  
33 *limited to, the ability of demand response resources to help meet*  
34 *distribution needs and transmission system needs and to help*  
35 *reduce a* load-serving entity's resource adequacy obligation  
36 pursuant to this section. In determining this value, the commission  
37 shall consider how these resources further the state's electrical  
38 grid reliability and the state's greenhouse gas emissions reduction  
39 goals. The commission shall ensure that changes in demand caused  
40 by load modifying demand response are expeditiously and

1 comprehensively reflected in relevant forecasting and planning  
2 proceedings and associated analyses and encourage reflection of  
3 these changes in demand in the operation of the grid.

4 (k) For purposes of this section, “load-serving entity” means an  
5 electrical corporation, electric service provider, or community  
6 choice aggregator. “Load-serving entity” does not include any of  
7 the following:

8 (1) A local publicly owned electric utility.

9 (2) The State Water Resources Development System commonly  
10 known as the State Water Project.

11 (3) Customer generation located on the customer’s site or  
12 providing electric service through arrangements authorized by  
13 Section 218, if the customer generation, or the load it serves, meets  
14 one of the following criteria:

15 (A) It takes standby service from the electrical corporation on  
16 a commission-approved rate schedule that provides for adequate  
17 backup planning and operating reserves for the standby customer  
18 class.

19 (B) It is not physically interconnected to the electrical  
20 transmission or distribution grid, so that, if the customer generation  
21 fails, backup electricity is not supplied from the electrical grid.

22 (C) There is physical assurance that the load served by the  
23 customer generation will be curtailed concurrently and  
24 commensurately with an outage of the customer generation.

25 SEC. 3. Section 380.5 is added to the Public Utilities Code, to  
26 read:

27 380.5. (a) In establishing a demand response program, the  
28 commission shall do all of the following:

29 (1) Establish rules *consistent with state and federal law* for how  
30 and when back-up generation may be used within the program and  
31 establish reporting and data collection requirements to verify  
32 compliance with those rules.

33 (2) Ensure the program approved for resource adequacy  
34 requirements ~~will deliver~~ *delivers* the expected results and ~~ensure~~  
35 ~~customers that benefit from promoting and maintaining grid~~  
36 ~~reliability share in the costs of the demand-side resources.~~ *provides*  
37 *ratepayer benefits.*

38 ~~(3) Require monitoring of technologies used in the program to~~  
39 ~~ensure compliance with applicable federal and state environmental~~  
40 ~~laws.~~

1     ~~(4)~~

2     ~~(3) Before the implementation of third-party programs a~~  
3     ~~program for residential customers, establish customer protection~~  
4     ~~rules regarding the participation, cost of participation, and ability~~  
5     ~~to opt out of the program without cost. program. A residential~~  
6     ~~customer who opts out of the program shall lose eligibility for~~  
7     ~~rebates, discounts, and other incentives offered to customers who~~  
8     ~~participate in the program. The commission shall prohibit the~~  
9     ~~imposition of charges on a residential customer for opting out of~~  
10    ~~the program. A residential customer who opts out of the program~~  
11    ~~shall still be eligible for time-variant pricing.~~

12    ~~(5)~~

13    ~~(4) Establish a method to accurately calculate the customer's~~  
14    ~~average level for peak consumption load shift at time intervals in~~  
15    ~~which the customer would be eligible for demand response program~~  
16    ~~payments or credits.~~

17    ~~(5) Establish metering and monitoring policies for the program.~~

18    ~~(b) The commission may establish metering, monitoring, and~~  
19    ~~consumer protection policies for demand response programs~~  
20    ~~involving third party demand response providers.~~

21    ~~(b) This section does not apply to time-variant pricing~~  
22    ~~established pursuant to Section 745.~~

23    ~~SEC. 4. Section 454.5 of the Public Utilities Code is amended~~  
24    ~~to read:~~

25    ~~454.5. (a) The commission shall specify the allocation of~~  
26    ~~electricity, including quantity, characteristics, and duration of~~  
27    ~~electricity delivery, that the Department of Water Resources shall~~  
28    ~~provide under its power purchase agreements to the customers of~~  
29    ~~each electrical corporation, which shall be reflected in the electrical~~  
30    ~~corporation's proposed procurement plan. Each electrical~~  
31    ~~corporation shall file a proposed procurement plan with the~~  
32    ~~commission not later than 60 days after the commission specifies~~  
33    ~~the allocation of electricity. The proposed procurement plan shall~~  
34    ~~specify the date that the electrical corporation intends to resume~~  
35    ~~procurement of electricity for its retail customers, consistent with~~  
36    ~~its obligation to serve. After the commission's adoption of a~~  
37    ~~procurement plan, the commission shall allow not less than 60~~  
38    ~~days before the electrical corporation resumes procurement~~  
39    ~~pursuant to this section.~~



1     ~~(b) An electrical corporation's proposed procurement plan shall~~  
2 ~~include, but not be limited to, all of the following:~~

3     ~~(1) An assessment of the price risk associated with the electrical~~  
4 ~~corporation's portfolio, including any utility-retained generation,~~  
5 ~~existing power purchase and exchange contracts, and proposed~~  
6 ~~contracts or purchases under which an electrical corporation will~~  
7 ~~procure electricity, electricity demand reductions, and~~  
8 ~~electricity-related products and the remaining open position to be~~  
9 ~~served by spot market transactions.~~

10    ~~(2) A definition of each electricity product, electricity-related~~  
11 ~~product, and procurement related financial product, including~~  
12 ~~support and justification for the product type and amount to be~~  
13 ~~procured under the plan.~~

14    ~~(3) The duration of the plan.~~

15    ~~(4) The duration, timing, and range of quantities of each product~~  
16 ~~to be procured.~~

17    ~~(5) A competitive procurement process under which the~~  
18 ~~electrical corporation may request bids for procurement-related~~  
19 ~~services and demand response services, including the format and~~  
20 ~~criteria of that procurement process.~~

21    ~~(6) An incentive mechanism, if any incentive mechanism is~~  
22 ~~proposed, including the type of transactions to be covered by that~~  
23 ~~mechanism, their respective procurement benchmarks, and other~~  
24 ~~parameters needed to determine the sharing of risks and benefits.~~

25    ~~(7) The upfront standards and criteria by which the acceptability~~  
26 ~~and eligibility for rate recovery of a proposed procurement~~  
27 ~~transaction will be known by the electrical corporation prior to~~  
28 ~~execution of the transaction. This shall include an expedited~~  
29 ~~approval process for the commission's review of proposed contracts~~  
30 ~~and subsequent approval or rejection thereof. The electrical~~  
31 ~~corporation shall propose alternative procurement choices in the~~  
32 ~~event a contract is rejected.~~

33    ~~(8) Procedures for updating the procurement plan.~~

34    ~~(9) A showing that the procurement plan will achieve the~~  
35 ~~following:~~

36    ~~(A) The electrical corporation, in order to fulfill its unmet~~  
37 ~~resource needs, shall procure resources from eligible renewable~~  
38 ~~energy resources in an amount sufficient to meet its procurement~~  
39 ~~requirements pursuant to the California Renewables Portfolio~~

1 Standard Program (Article 16 (commencing with Section 399.11)  
2 of Chapter 2.3).

3 ~~(B) The electrical corporation shall create or maintain a~~  
4 ~~diversified procurement portfolio consisting of both short-term~~  
5 ~~and long-term electricity and electricity-related and demand-side~~  
6 ~~products, including demand response products and tariffs that can~~  
7 ~~either meet or reduce an electrical corporation's resource adequacy~~  
8 ~~requirements, as determined by the commission.~~

9 ~~(C) The electrical corporation shall first meet its unmet resource~~  
10 ~~needs through all available energy efficiency and demand response~~  
11 ~~resources that are cost effective, reliable, and feasible.~~

12 ~~(10) The electrical corporation's risk management policy,~~  
13 ~~strategy, and practices, including specific measures of price~~  
14 ~~stability~~

15 ~~(11) A plan to achieve appropriate increases in diversity of~~  
16 ~~ownership and diversity of fuel supply of nonutility electrical~~  
17 ~~generation.~~

18 ~~(12) A mechanism for recovery of reasonable administrative~~  
19 ~~costs related to procurement in the generation component of rates.~~

20 ~~(e) The commission shall review and accept, modify, or reject~~  
21 ~~each electrical corporation's procurement plan. The commission's~~  
22 ~~review shall consider each electrical corporation's individual~~  
23 ~~procurement situation, and shall give strong consideration to that~~  
24 ~~situation in determining which one or more of the features set forth~~  
25 ~~in this subdivision shall apply to that electrical corporation. A~~  
26 ~~procurement plan approved by the commission shall contain one~~  
27 ~~or more of the following features, provided that the commission~~  
28 ~~may not approve a feature or mechanism for an electrical~~  
29 ~~corporation if it finds that the feature or mechanism would impair~~  
30 ~~the restoration of an electrical corporation's creditworthiness or~~  
31 ~~would lead to a deterioration of an electrical corporation's~~  
32 ~~creditworthiness.~~

33 ~~(1) A competitive procurement process under which the~~  
34 ~~electrical corporation may request bids for procurement-related~~  
35 ~~services. The commission shall specify the format of that~~  
36 ~~procurement process, as well as criteria to ensure that the auction~~  
37 ~~process is open and adequately subscribed. Any purchases made~~  
38 ~~in compliance with the commission-authorized process shall be~~  
39 ~~recovered in the generation component of rates.~~

1     ~~(2) An incentive mechanism that establishes a procurement~~  
2 ~~benchmark or benchmarks and authorizes the electrical corporation~~  
3 ~~to procure from the market, subject to comparing the electrical~~  
4 ~~corporation's performance to the commission-authorized~~  
5 ~~benchmark or benchmarks. The incentive mechanism shall be~~  
6 ~~clear, achievable, and contain quantifiable objectives and standards.~~  
7 ~~The incentive mechanism shall contain balanced risk and reward~~  
8 ~~incentives that limit the risk and reward of an electrical corporation.~~

9     ~~(3) Upfront achievable standards and criteria by which the~~  
10 ~~acceptability and eligibility for rate recovery of a proposed~~  
11 ~~procurement transaction will be known by the electrical corporation~~  
12 ~~prior to the execution of the bilateral contract for the transaction.~~  
13 ~~The commission shall provide for expedited review and either~~  
14 ~~approve or reject the individual contracts submitted by the electrical~~  
15 ~~corporation to ensure compliance with its procurement plan. To~~  
16 ~~the extent the commission rejects a proposed contract pursuant to~~  
17 ~~this criteria, the commission shall designate alternative procurement~~  
18 ~~choices obtained in the procurement plan that will be recoverable~~  
19 ~~for ratemaking purposes.~~

20     ~~(d) A procurement plan approved by the commission shall~~  
21 ~~accomplish each of the following objectives:~~

22     ~~(1) Enable the electrical corporation to fulfill its obligation to~~  
23 ~~serve its customers at just and reasonable rates.~~

24     ~~(2) Eliminate the need for after-the-fact reasonableness reviews~~  
25 ~~of an electrical corporation's actions in compliance with an~~  
26 ~~approved procurement plan, including resulting electricity~~  
27 ~~procurement contracts, practices, and related expenses. However,~~  
28 ~~the commission may establish a regulatory process to verify and~~  
29 ~~ensure that each contract was administered in accordance with the~~  
30 ~~terms of the contract, and contract disputes that may arise are~~  
31 ~~reasonably resolved.~~

32     ~~(3) Ensure timely recovery of prospective procurement costs~~  
33 ~~incurred pursuant to an approved procurement plan. The~~  
34 ~~commission shall establish rates based on forecasts of procurement~~  
35 ~~costs adopted by the commission, actual procurement costs~~  
36 ~~incurred, or combination thereof, as determined by the commission.~~  
37 ~~The commission shall establish power procurement balancing~~  
38 ~~accounts to track the differences between recorded revenues and~~  
39 ~~costs incurred pursuant to an approved procurement plan. The~~  
40 ~~commission shall review the power procurement balancing~~

1 accounts, not less than semiannually, and shall adjust rates or order  
2 refunds, as necessary, to promptly amortize a balancing account,  
3 according to a schedule determined by the commission. Until  
4 January 1, 2006, the commission shall ensure that any  
5 overcollection or undercollection in the power procurement  
6 balancing account does not exceed 5 percent of the electrical  
7 corporation's actual recorded generation revenues for the prior  
8 calendar year excluding revenues collected for the Department of  
9 Water Resources. The commission shall determine the schedule  
10 for amortizing the overcollection or undercollection in the  
11 balancing account to ensure that the 5 percent threshold is not  
12 exceeded. After January 1, 2006, this adjustment shall occur when  
13 deemed appropriate by the commission consistent with the  
14 objectives of this section.

15 (4) Moderate the price risk associated with serving its retail  
16 customers, including the price risk embedded in its long-term  
17 supply contracts, by authorizing an electrical corporation to enter  
18 into financial and other electricity-related product contracts.

19 (5) Provide for just and reasonable rates, with an appropriate  
20 balancing of price stability and price level in the electrical  
21 corporation's procurement plan.

22 (e) The commission shall provide for the periodic review and  
23 prospective modification of an electrical corporation's procurement  
24 plan.

25 (f) The commission may engage an independent consultant or  
26 advisory service to evaluate risk management and strategy. The  
27 reasonable costs of any consultant or advisory service is a  
28 reimbursable expense and eligible for funding pursuant to Section  
29 631.

30 (g) The commission shall adopt appropriate procedures to ensure  
31 the confidentiality of any market sensitive information submitted  
32 in an electrical corporation's proposed procurement plan or  
33 resulting from or related to its approved procurement plan,  
34 including, but not limited to, proposed or executed power purchase  
35 agreements, data request responses, or consultant reports, or any  
36 combination, provided that the Office of Ratepayer Advocates and  
37 other consumer groups that are nonmarket participants shall be  
38 provided access to this information under confidentiality  
39 procedures authorized by the commission.

~~(h) Nothing in this section alters, modifies, or amends the commission's oversight of affiliate transactions under its rules and decisions or the commission's existing authority to investigate and penalize an electrical corporation's alleged fraudulent activities, or to disallow costs incurred as a result of gross incompetence, fraud, abuse, or similar grounds. Nothing in this section expands, modifies, or limits the State Energy Resources Conservation and Development Commission's existing authority and responsibilities as set forth in Sections 25216, 25216.5, and 25323 of the Public Resources Code.~~

~~(i) An electrical corporation that serves less than 500,000 electric retail customers within the state may file with the commission a request for exemption from this section, which the commission shall grant upon a showing of good cause.~~

~~(j) (1) Prior to its approval pursuant to Section 851 of any divestiture of generation assets owned by an electrical corporation on or after the date of enactment of the act adding this section, the commission shall determine the impact of the proposed divestiture on the electrical corporation's procurement rates and shall approve a divestiture only to the extent it finds, taking into account the effect of the divestiture on procurement rates, that the divestiture is in the public interest and will result in net ratepayer benefits.~~

~~(2) Any electrical corporation's procurement necessitated as a result of the divestiture of generation assets on or after the effective date of the act adding this subdivision shall be subject to the mechanisms and procedures set forth in this section only if its actual cost is less than the recent historical cost of the divested generation assets.~~

~~(3) Notwithstanding paragraph (2), the commission may deem proposed procurement eligible to use the procedures in this section upon its approval of asset divestiture pursuant to Section 851.~~

~~SEC. 5:~~

~~SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within~~

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O